

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 16.5(1)“r,” and 17A.3(1)“b,” the Iowa Finance Authority hereby amends Chapter 42, “Emergency Solutions Grant Program,” Iowa Administrative Code.

These amendments update definitions, clarify and simplify the rules, and eliminate potential redundancies and conflicts with federal law and regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 30, 2017, as **ARC 3276C**. The Authority received no public comment on the amendments published under Notice and made no changes to the amendments as published under Notice.

The Iowa Finance Authority adopted these amendments on October 4, 2017.

After analysis and review of this rule making, no impact on jobs is expected.

These amendments are intended to implement Iowa Code section 16.5(1)“m” and 42 U.S.C. Sections 11371 through 11378.

These amendments will become effective on November 29, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 265—42.1(16) as follows:

265—42.1(16) Purpose. ~~The Emergency Solutions Grant Program is a federal program of the U.S. Department of Housing and Urban Development, designed to improve the quality of services to the homeless and to prevent individuals and families from becoming homeless assist individuals and families to quickly regain stability in permanent housing after experiencing a housing crisis or homelessness. The program will make available needed services and help meet the costs of providing essential social services so that homeless individuals and families have access not only to safe and sanitary shelter but also to the supportive services and other types of assistance the individuals and families need to improve their situations.~~ The Iowa finance authority is the recipient and administrator of ESG program funds allocated to the state of Iowa.

ITEM 2. Amend rule 265—42.2(16) as follows:

265—42.2(16) Definitions. When used in this chapter, unless the context otherwise requires:

“*Applicant*” means an eligible provider of eligible homeless services which is applying for funds through the ESG program.

~~“*Domestic violence shelter*” means a homeless shelter primarily or exclusively serving clients who are homeless due to domestic violence.~~

~~“*Emergency shelter*” means a homeless shelter with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for homeless persons, in accordance with the definition at 24 CFR Part 576.~~

“*ESG program*” or “*ESGP*” means the Emergency Solutions Grant Program created pursuant to Title 42 of the U.S. Code (42 U.S.C. Section 11375) as well as parts of Title 24 of the Code of Federal Regulations (24 CFR Part 576).

“*HMIS*” means the Homeless Management Information System, which is a client-level data collection and management system implemented at the community level that allows for better coordination among agencies providing services to clients.

“*Homeless*” or “*homeless individual*” shall have the meaning set forth in 24 CFR Part 91.

~~“*Homeless prevention*” means activities or programs designed to prevent the incidence of homelessness.~~

~~“*Homeless shelter*” means a facility providing temporary housing and services for homeless persons.~~

“*HUD*” means the U.S. Department of Housing and Urban Development.

“*IFA*” means the Iowa finance authority.

~~“Major rehabilitation” means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.~~

~~“Obligated” means that IFA has placed orders, awarded contracts, received services, or entered into similar transactions that require payment from the grant amount. Funds awarded by IFA by a written agreement or letter of award requiring payment from the grant amount are obligated.~~

~~“Private, nonprofit organization” means a secular or religious an organization described in Section 501(c) of the Internal Revenue Code which:~~

- ~~1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,~~
- ~~2. Has an accounting system and a voluntary board,~~
- ~~3. Practices nondiscrimination in the provision of services to clients, and~~
- ~~4. Has registered with the state of Iowa as a nonprofit corporation.~~

~~“Recipient” means any private, nonprofit organization or city or county government to which IFA distributes ESG program funds.~~

~~“Rehabilitation” means repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings. Costs of rehabilitation may include labor, materials, tools, and other costs of improving buildings.~~

~~“Renovation” means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.~~

~~“SAF” means the shelter assistance fund, as set forth in 265—Chapter 41.~~

~~“Subrecipient” means any private, nonprofit organization or city or county government to which the recipient IFA distributes ESG program funds.~~

~~“Transitional housing” means a project that is designed to provide housing and appropriate support services to homeless persons to facilitate movement to independent living within a specified time frame.~~

~~“Value of the building” means the monetary value assigned to a building by an independent real estate appraiser or as otherwise reasonably established by the recipient or the subrecipient.~~

ITEM 3. Amend rule 265—42.4(16) as follows:

265—42.4(16) Eligible activities. Eligible activities are based on guidelines established by the Stewart B. McKinney Homeless Assistance Act of 1987 and are further defined in 24 CFR Part 576. Activities assisted by this program may include only the following:

42.4(1) Street outreach. Provision of essential services necessary to reach out to unsheltered homeless people; to connect them with emergency shelter, housing, or critical services; and to provide urgent, non-facility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility.

42.4(2) ~~Emergency shelter~~ Shelter. Provision of essential services to homeless families and individuals in emergency shelters and the operation of emergency shelters.

42.4(3) Prevention of homelessness. The provision of housing relocation and stabilization services, and short- or medium-term rental assistance, or other financial assistance as necessary to prevent an individual or family from moving into an emergency shelter or another place described in paragraph (1) of the definition of “homeless” in 24 CFR Part 576.2 experiencing homelessness.

42.4(4) Rapid re-housing. The provision of housing relocation and stabilization services, and short- or medium-term rental assistance, or other financial assistance as necessary to help a homeless an individual or family experiencing homelessness to move as quickly as possible into permanent housing and achieve stability in that housing.

42.4(5) Administrative costs. A ~~recipient~~ subrecipient may use a portion of a grant received for administrative purposes as determined by IFA. IFA reserves the authority for distribution of administrative funds.

42.4(6) Homeless Management Information System (HMIS) projects. IFA may award grants for HMIS implementation to support data collection, reporting, and analysis as long as the total amount of such grants does not exceed 10 percent of the total Emergency Solutions Grant Program allocation.

Eligible costs may include equipment, software, services, personnel, space, and operations for HMIS activities. ~~In the case of parties to a supportive housing grant agreement or renewal grant agreement with the United States Department of Housing and Urban Development for HMIS implementation who are in need of the required cash match,~~ IFA may in its discretion award such a grant, subject to the terms of this subrule, without regard to the application and review provisions of rules 265—42.6(16) and 265—42.7(16). Subrecipients of grants in support of other eligible activities listed in subrules 42.4(1) to 42.4(4) may also use a portion of such grants to support data collection and reporting using the HMIS or comparable database.

ITEM 4. Amend rule 265—42.5(16) as follows:

265—42.5(16) Ineligible activities. As a general rule, any activity that is not authorized under the provisions of P.L. 100-628 is ineligible to be carried out with ESG program funds. ~~The following are items specifically listed as ineligible in 24 CFR Part 576.~~

- ~~1. Acquisition or new construction of an emergency shelter for the homeless;~~
- ~~2. Rehabilitation administration, such as preparation of work specifications, loan processing, or inspections;~~
- ~~3. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities unless the activity complies with all requirements as outlined in 24 CFR Part 576.23(a) and (b).~~

ITEM 5. Amend rule 265—42.6(16) as follows:

265—42.6(16) Application procedures. IFA will issue requests for ~~proposals from eligible applicants~~ applications periodically, as often long as the state expects funding from HUD. Requests for ~~proposals~~ applications may combine the ESG program with the SAF program. ~~The proposals must~~ application shall be submitted on the forms or on-line system as prescribed by IFA and must, at a minimum, include the amount of funds requested, a description of the need for the funds, documentation of other available funding sources, the source of required local match, and the estimated number of persons to be served by the applicant. Maximum Application requirements, priorities, and maximum and minimum grant awards will be established by IFA for each competition.

ITEM 6. Amend rule 265—42.7(16) as follows:

265—42.7(16) Application review process. The following procedures will be used in the review of applications.

42.7(1) Review; threshold criteria; eligible activities.

a. Review of applications. ~~Applications will be reviewed by a panel appointed by IFA. Applications will be reviewed based on priorities established during each competition round, in accordance with the state of Iowa consolidated plan for housing and community development. Applicant experience and capacity, as well as past performance, are top priorities. Other review IFA may utilize a panel to review the applications. Review criteria include, but are not limited to, program design, applicant experience and capacity, community partnerships and need, performance, budget and grant management, program accessibility, program partnerships, the number of persons or households served, and how well the program leverages other resources.~~

b. Threshold criteria. IFA will identify threshold criteria that all programs must meet in order to be eligible.

c. Activities eligible during funding cycle. Each competition round will also specify which of the total eligible program activities will be supported during that competition round.

42.7(2) If an application contains an activity determined to be ineligible, at IFA's discretion, the ineligible activity may be deleted from the application or referred to another funding source or the application may be disqualified.

42.7(3) IFA reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application.

42.7(4) IFA staff may review applications with other state agencies or other groups with expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources.

42.7(5) Based on the review process, IFA may revise the overall funding request by activity or funding level and recommend a final funding figure to the IFA board of directors for approval.

~~**42.7(6)** IFA reserves the right to negotiate all aspects of a funding request prior to final approval.~~

~~**42.7(7)** IFA shall establish the term of each funding award.~~

ITEM 7. Amend rule 265—42.8(16) as follows:

265—42.8(16) Matching requirement. Each subrecipient of ESG program funds must ~~match the grant amount with an equal amount~~ provide matching contributions, according to the requirements of each competition. In calculating the amount of matching funds, the following may be included: cash contributions expended for allowable costs of the subrecipient for the ESG program or noncash contributions, including the value of any real property, equipment, goods, or services contributed to the subrecipient's ESG program provided that, if the subrecipient had to pay for them with grant funds, the costs would have been allowable. IFA may allow an exemption of matching funds up to a maximum of \$100,000 of the state allocation received from HUD for the subrecipients least capable of providing such matching amounts. The subrecipient must document its need to participate in this exemption from matching requirements and must receive prior approval from IFA before the exemption will be effective.

ITEM 8. Rescind rule 265—42.10(16) as follows:

265—42.10(16) Restrictions placed on recipients and subrecipients.

~~**42.10(1)** *Use as provider of homeless services.* Any building for which ESG program funds are used must be maintained as a provider of homeless services for not less than a three-year period or for not less than a ten-year period if the funding amounts are used for major rehabilitation or conversion of the building. If program funds are used for operating and maintenance costs, the recipient must continue to provide homeless services for at least one year. In calculating the applicable time period, the beginning dates of the three- and ten-year periods are determined as follows:~~

~~*a.*—In the case of a building that was not operated as a provider of services for the homeless before receipt of ESG program funds, on the date of initial occupancy as a provider of services to the homeless.~~

~~*b.*—In the case of a building that was operated as a provider of services to the homeless before the receipt of ESG program funds, on the date that those funds are first obligated to the homeless service provider.~~

~~**42.10(2)** *Building standards.* Any building for which ESG program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must comply with all state and local building codes and ordinances and any other applicable legal requirements.~~

~~**42.10(3)** *Participation by homeless individuals and families.* To the maximum extent possible, the subrecipient must involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted with ESG funds, in providing services assisted with ESG funds, and in providing services for occupants of facilities assisted with ESG funds.~~

~~**42.10(4)** *Termination of assistance and grievance procedure.* Recipients and subrecipients must establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. This process must include a hearing that provides individuals a full opportunity to address issues of noncompliance.~~

~~**42.10(5)** *Data reporting system.* Recipients and subrecipients shall participate in the HUD-approved Homeless Management Information System (HMIS) adopted by IFA as required in the executed contract, unless the recipient or subrecipient qualifies as a domestic violence shelter, in which case the recipient or subrecipient shall participate in required data collection and reporting activities using a comparable database defined by HUD (HUD HMIS Data Standards, Revised Notice March 2011).~~

~~42.10(6) Ensuring confidentiality.~~ Recipients and subrecipients must develop and implement procedures to guarantee the confidentiality of records pertaining to any individual to whom family violence prevention or treatment services are provided. In addition, the address or location of any family violence shelter shall not be disclosed to any person except with written authorization of the shelter director.

~~42.10(7) Coordination with other homeless services.~~ Subrecipients must coordinate and integrate, to the maximum extent practicable, grant-funded activities with other homeless service programs in the community.

~~42.10(8) Access to mainstream services and resources.~~ Subrecipients must ensure that all program participants are assisted, to the maximum extent practicable, in obtaining mainstream services and financial assistance, including housing, health, social services, employment, education, and youth programs for which participants are eligible.

ITEM 9. Renumber rules ~~265—42.11(16)~~ and ~~265—42.12(16)~~ as ~~265—42.10(16)~~ and ~~265—42.11(16)~~.

ITEM 10. Amend renumbered rule ~~265—42.10(16)~~ as follows:

~~265—42.10(16) Compliance with applicable federal and state laws and regulations.~~ All recipients and subrecipients shall comply with the Iowa Code governing activities performed under this program and with all applicable provisions of the Stewart B. McKinney Homeless Assistance Act of 1987 and its implementing regulations, as well as the revising regulations of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), as defined by 24 CFR Part 576. Use of ESG program funds must comply with the following additional requirements: All subrecipients shall also comply with all applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 CFR Part 200.

~~42.10(1) Nondiscrimination and equal opportunity.~~ All recipients and subrecipients must comply with the following:

~~a.—The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107 (June 1, 1999); and Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2002d) and implementing regulations at 24 CFR Part 1 (June 1, 1999).~~

~~b.—Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.~~

~~c.—The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07).~~

~~d.—The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.~~

~~e.—The Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR Part 24.~~

~~f.—Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.~~

~~g.—Contracting requirements at 24 CFR Part 24 that prohibit the use of federally disbarred, suspended, or ineligible contractors for expenses related to the ESG program.~~

~~h.—Job training and employment for low-income residents requirements of Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR Part 135, except that homeless individuals have priority over other Section 3 residents in accordance with 24 CFR Part 576.405(e).~~

~~i.—The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR Part 35, Subparts A, B, H, J, K, M, and R, which apply to all shelters assisted under the ESG program and all housing occupied by program participants.~~

~~42.10(2) Auditing.~~ All recipients and subrecipients must comply with auditing requirements as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133.

ITEM 11. Amend renumbered rule 265—42.11(16) as follows:

265—42.11(16) Administration.

~~42.11(1) Contracts.~~ Upon selection of an application for funding, IFA will either initiate a contract or authorize another entity to initiate a contract on IFA's behalf. If a local city or county government or a nonprofit organization is designated as the recipient, the subrecipients covered through the contract shall remain responsible for adherence to the requirements of the ESG program, including the federal ESG program rules and the state program rules as set forth herein. These rules and applicable federal and state laws and regulations become part of the contract. Certain activities may require that permits or clearances be obtained from other state or federal agencies before the start of the project. Funding awards may be conditioned upon the timely completion of these requirements.

~~42.11(2) Record keeping and retention.~~ Financial records, supporting documents, statistical records, and all other records pertinent to the funded program shall be retained by the recipient and the subrecipient. Private, nonprofit recipients and subrecipients covered through an ESG program contract from a local city or county government or nonprofit organization are responsible for ensuring that pertinent records of their ESG program funds be made available to the administering city or county or nonprofit organization and to IFA upon request. Proper record retention must be in accordance with the following:

a. Records for any assisted activity shall be retained for five years after the end of the grant period and, if applicable, until audit procedures are completed and accepted by IFA.

b. Representatives of the Secretary of the U.S. Department of Housing and Urban Development, the Inspector General, the General Accounting Office, the state auditor's office, and IFA shall have access to all books, accounts, documents, records, and other property belonging to or in use by a recipient or subrecipient pertaining to the receipt of assistance under these rules.

~~42.11(3) Reporting requirements.~~ ~~Recipients and subrecipients~~ Subrecipients shall submit reports to IFA as prescribed in the contract. Reports include:

a. HMIS data reports. All ~~recipients and~~ subrecipients of ESG program funds are required to submit regular reports on clients served using the current HMIS reporting process as prescribed by IFA unless a ~~recipient or~~ subrecipient qualifies as a domestic violence shelter, in which case the ~~recipient or~~ subrecipient must submit reports using a comparable database. A comparable database must collect client-level data over time and generate unduplicated aggregate reports based on that data.

b. Requests for funds. ~~Recipients and subrecipients~~ Subrecipients must submit requests for funds during the contract year period at intervals and using forms as prescribed by IFA. IFA may perform any review or field inspections it deems necessary to ensure program compliance, including review of ~~recipient and~~ subrecipient records and reports. When problems of compliance are noted, IFA may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the remedies for noncompliance set forth in ~~42.12(5)~~ subrule 42.11(5).

~~42.11(4) Amendments to contracts.~~ Contracts may be amended on an individual basis in emergency situations. Any request to amend a contract must be submitted in writing to IFA. IFA will determine if the request to amend is justified based on the material presented in the letter of request. No amendment is valid until approved in writing by IFA.

~~42.11(5) Remedies for noncompliance.~~ At any time, IFA may, for cause, find that a ~~recipient or~~ subrecipient is not in compliance with the requirements under this program. Reasons for a finding of noncompliance include, but are not limited to, the ~~recipient's or~~ subrecipient's use of program funds for activities not described in its application, the ~~recipient's or~~ subrecipient's failure to complete approved activities in a timely manner, the ~~recipient's or~~ subrecipient's failure to comply with any applicable state or federal rules or regulations, or the ~~recipient's or~~ subrecipient's lack of continuing capacity to carry out the approved program in a timely manner. At IFA's discretion, remedies for noncompliance may include the following:

- a.* Issue a warning letter stating that continued failure to comply with program requirements within a stated period of time will result in a more serious action.
- b.* Condition a future award.
- c.* Direct the ~~recipient or~~ subrecipient to stop incurring costs with grant funds.
- d.* Require that some or all of the awarded funds be remitted to the state.
- e.* Reduce the level of funds the ~~recipient or~~ subrecipient would otherwise be entitled to receive.
- f.* Elect not to provide future award funds to the ~~recipient or~~ subrecipient until appropriate actions are taken to ensure compliance.

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